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CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No: 956/93

Transfer Application No:

DATE OF DECISION: 9-12-94

Smt. Leelabai G. Patil Petitioner
Shri. Ajay G. Patil

Shri. D.V. Gangal Advocate for the Petitioners

Versus

Union of India & Ors. Respondent

Shri. R.K. Shetty Advocate for the Respondent(s)

CORAM :

The Hon'ble Shri M.R.Kolhatkar, Member (A)

The Hon'ble Shri

1. To be referred to the Reporter or not?
2. Whether it needs to be circulated to other Benches of the Tribunal?

M.R.Kolhatkar

(M.R.Kolhatkar)
Member (A)

J*

(8)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

OA 956/93.

Smt. Leelabai G. Patil } .. Applicants
Shri. Ajay G. Patil }

Vs.

Union of India & Ors. .. Respondents

CORAM : Hon'ble Shri. M.R. Kolhatkar, Member (A)

APPEARANCES

1. Shri. D.V. Gangal, Counsel
for the applicants
2. Shri. R.K. Shetty, Counsel
for the respondents

JUDGMENT

DATED : 9-12-94

X Per Shri. M.R. Kolhatkar, Member (A) X

Applicant No. 1 is the widow of late Shri. G.D. Patil, who was an employee of Ordnance Factory, Busawal and who expired on 11/12/1989. Applicant No. 2 is the son of the deceased employee. Application of Applicant No. 2 for compassionate appointment has been rejected by the respondent vide Annexure 'A1' letter dated 18.4.1991. By ^a subsequent letter dated 19.12.1991 at Annexure 'A2' which is in reply to the representation of Applicant No. 1, it has been stated that as one of her sons is employed, the matter was referred to higher authorities and it is regretted that the request for compassionate appointment cannot be acceded to. The applicant has impugned these orders. According to her, her elder son who is stated to be employed, stays separately. The late husband

is survived by the widow and an unmarried daughter and therefore the family is in distress and Applicant No. 2 deserves to be given compassionate appointment. The applicant is educationally qualified to be considered for a clerical post, but he is prepared to accept even group 'D' post.

2. Respondents have resisted the application on the ground that the applicant is in receipt of Rs. 90,982 towards terminal benefits and the family is also getting family pension @ Rs.765/- P.M plus 97% Dearness Relief thereon. Moreover, the elder son of the applicant is also employed and the Department, after consideration of all the facts, have decided not to grant compassionate appointment. The respondents have also pointed-out that since the applicant's husband died an accidental death in the course of employment, she has also been given compensation under Workmen Compensation Act to the tune of Rs.70,000 and the applicants have also been drawing interest on this amount (as ordered by the Aurangabad Bench of the Bombay High Court) as referred to in the sur-rejoinder of the respondents. ^{counter-} It is contended by the applicant that the fact that the family got compensation under Workmen's Compensation Act cannot be a consideration for rejecting the relief of compassionate appointment. The applicant has also relied on the following judgments of the Tribunal :

(i) O.A. 938/92 decided on 12-7-1993

(Villas Kashinath Mistry/Kamlabai Kashinath Mistry v/s. Union of India & Ors.)

That was a case relating to Railway Department and the Tribunal accepted the application on the ground that there is nothing in the rules contained in the Master Circular on Appointment on Compassionate

Grounds, which says that if the employee dies soon before his due date of retirement or if other persons from the family ~~are~~ are railway employees, he would not be entitled to compassionate appointment.

(ii) O.A. 1090/93 decided on 20-12-93

XShri.Ganesh P. Vispute Vs. Union of India & Ors. X

In this case, reliance was placed on the case of Vilas Kashinath Mistry/ Kamlabai Kashinath Mistry and it was held that the respondents should grant compassionate appointment to the applicant.

3. The respondents however have referred to the Supreme Court judgment, especially in the case of Mrs.Asha Ambe Gaonkar V. LIC, wherein the Hon'ble Supreme Court has laid down that grant of compassionate appointment is not a matter of bounty and that the same is required to be regulated by statutes or rules as the case may be. The respondents have also invited our attention to the SLP 9421 of 1994 arising out of an O.A of the Bombay Bench of the Tribunal in which the Hon'ble Supreme Court allowed the SLP vide Union of India Vs. Smt. Mohammadabai Nawab decided on August 18, 1994, where Hon'ble Supreme Court observed as below :

"The undisputed facts are that the respondent has been granted monetary benefit of Rs.70,260 in lump sum in addition to family pension of Rs.1,276 per month. In these circumstances, and in view of the principles indicated by this Court in Life Insurance Corporation of India vs. Mrs. Asha Ramchandra & Anr. (JT 1994 (2) S.C.183), the direction given by the Tribunal to consider the respondent for appointment on compassionate ground is untenable."

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4. There is no doubt ^{that} the position is well settled that compassionate appointment has to be considered as per law or as per guidelines where there is no law. In this particular case, there are well known guidelines and the respondents after considering the case, have decided not to grant compassionate appointment. The test to be applied is distress test. Considering the facts of the case, namely receipt of substantial amount of pensionery benefits/^{family} terminal benefits/^{pension}, compensation under Workmen's compensation Act and also keeping in view the fact that the elder son of the applicant is otherwise employed, we are not persuaded that the distress test is satisfied in this case. The contention of the applicant that receipt ^{under} Workmen's Compensation Act should not be taken into account does not in our view merit consideration. We therefore find that there is no justification for interference with the decision of the Department and we dispose of the O.A by passing the following order :

O R D E R

as devoid of merits.

O.A is dismissed/ No orders as to costs.

M. R. Kolhatkar

(M. R. KOLHATKAR)
MEMBER (A)

(12)

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Review Petition No.41/95

Original Application No. 956/93

Transfer Application No.

Date of Decision : 28/3.1995

Smt.L.G.Patil & Obs.

Petitioner

Advocate for the
Petitioners

Versus

Union of India & Ors.

Respondents

Advocate for the
respondents

C O R A M :

The Hon'ble Shri M.R.Kolhatkar, Member(A).

The Hon'ble Shri

(1) To be referred to the Reporter or not ?

(2) Whether it needs to be circulated to other Benches of the Tribunal?

M.R.Kolhatkar
(M.R.KOLHATKAR)
MEMBER(A).

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL,

BOMBAY BENCH, BOMBAY.

(B)

Review Petition No.41/95
in
Original Application No.956/93.

Smt.L.G.Patil & Ors. ... Applicants.
V/s.

Union of India & Ors. ... Respondents.

Coram: Hon'ble Shri M.R.Kolhatkar, Member(A).

ORDER ON REVIEW PETITION BY CIRCULATION

(Per Shri M.R.Kolhatkar, Member(A)) Dt. 28/3/1995.

This Review Petition by the original applicants praying for review of our Judgment dt. 9.12.1994 declining to interfere with the decision of the department not to give compassionate appointment. According to review petitioner, the Tribunal has committed a basic and fundamental mistake in respect of actual receipt of amounts other than family pension. In particular, the amount of gratuity has been divided among the heirs of the deceased and not only should the Tribunal not have taken into account/under Workmen's Compensation Act, the Tribunal should also have considered that the matter is pending in appeal before the High Court. Secondly, the Review Petitioner states that the Tribunal has not considered the Judgment of the Tribunal in O.A. 938/92 decided on 12.7.1994 and O.A. 1090/93 decided on 12.10.1993.

2. We have considered the various contentions of the Review Petitioners and we do not find any substance therein. In our view, the Judgment does not contain

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any error apparent on the face of the record nor are any other sufficient grounds made out for review of the Judgment in terms of Order 47 Rule-1 of the CPC. The Review Petition is liable to be dismissed and is hereby dismissed.

M.R.Kolhatkar

(M.R.KOLHATKAR)
MEMBER(A)

B.